



POLICE DEPARTMENT

February 12, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Christopher Flannery
Tax Registry No. 922352
94 Precinct
Disciplinary Case Nos. 83155/07, 84416/08 & 85379/09

The above-named member of the Department appeared before the Court on October 14, 2009, and December 4, 2009, charged with the following:

Disciplinary Case No. 83155/07

1. Said Police Officer Christopher Flannery, assigned to the 94th Precinct, while on duty, on or about July 7, 2006 at approximately 1630 hours, failed to notify the desk officer prior to leaving a prisoner unattended in the youth room.

P.G. 202-31, Page 1, Note – ARREST PROCESSING OFFICER
DUTIES AND RESPONSIBILITIES

2. Said Police Officer Christopher Flannery, assigned as indicated in specification #1, on or about August 11, 2006 at approximately 1730 hours, did fail to and neglect to notify the Desk Officer prior to transporting an individual, identity known to the Department, in a Department vehicle.

P.G. 212-07, Page 1, Paragraph 1 – TRANSPORTING NON-MEMBER [sic] OF THE
SERVICE IN A [sic] RADIO MOTOR PATROL
CARS COMMAND OPERATION [sic]

3. Said Police Officer Christopher Flannery, assigned as indicated in specification #1, on or about and in between September 18, 2006 and February 6, 2007, did fail and neglect to be punctual when reporting for duty, to wit: said Officer was late to roll call on the following dates for a total of three hours (3 hours) and twenty minutes (20 minutes):

09/18/06 - 30 minutes	11/01/06 - 35 minutes
12/09/06 - 25 minutes	12/16/06 - 30 minutes
01/09/07 - 25 minutes	02/06/07 - 55 minutes

P.G. 203-03, Page 1 Paragraph 3 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

Disciplinary Case No. 84416/08

1. Said Police Officer, Christopher Flannery, assigned to the 94th Precinct, while on duty, on or about April 10, 2007 failed to make proper entries in his Activity Log regarding the issuance of a Criminal Court Summons.

P.G. 206-03, Page 1, Paragraph 6 – VIOLATIONS SUBJECT TO COMMAND
DISCIPLINARY MATTERS

2. Said Police Officer, Christopher Flannery, assigned as indicated in specification # 1, on or about September 8, 2007, did fail and neglect to properly search a prisoner before placing him in the precinct holding cell.

P.G. 208-05, Page 1, Paragraph B (1) – ARREST - GENERAL SEARCH GUIDELINES

3. Said Police Officer, Christopher Flannery, assigned as indicated in specification #1, on or about July 30, 2007 August 30, 2007, October 8, 2007 and December 18, 2007, did report late for duty, for a total of fifty-five (55) minutes:

7/30/07 - 15 min	10/8/07 - 15 min
8/30/07 - 15 min	12/18/07 - 10min

P.G. 203-03, Page 1, Paragraph 3 – COMPLIANCE WITH ORDERS GENERAL
REGULATIONS

Disciplinary Case No. 85379/09

1. Said Police Officer Christopher Flannery, while on-duty and assigned to the 94th Precinct, on or about November 8, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did fail to prioritize a radio run.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through counsel, pleaded Not Guilty to Specification Nos. 1 and 2 of Case No. 83155/07, and to the single specification in Case No. 85379/09. He pleaded Guilty to Specification No. 3 of Case No. 83155/07 and to the three specifications of Case No. 84416/08, and testified in mitigation of the penalty. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 83155/07, the Respondent is found Guilty of Specifications Nos. 1 and 2. Having pleaded Guilty to Specification No. 3 of Case No. 83155/07 and to Specification Nos. 1-3 of Case No. 84416/08, the Respondent is found Guilty. In Case No. 85379/09, the Respondent is found Not Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Roderick Dantini, Sergeant Michael Benitez, and Sergeant Sebastian Mannuzza as witnesses.

Lieutenant Roderick Dantini

From approximately 2002 to 2007, Dantini was assigned to the 94 Precinct as a sergeant. On July 7, 2006, he was the desk officer on a 1450x2347 tour. Upon the start of his tour, Dantini inspected both the regular cells and the juvenile room. Also known as the youth room, this was a

separate room where prisoners under the age of 16 were to be lodged. The juvenile room was to the left of the desk about 30 feet away, closer to the front entrance of the station house than to the desk. Dantini did not have a direct view of the juvenile room when seated; he had to "kind of move my body up" in order to do so. There was a slim rectangular window on the door of the juvenile room.

Dantini stated that at the outset of his tour, perhaps 1500 hours, a juvenile prisoner was in the juvenile room with the Respondent. Dantini believed the arrest was for criminal mischief, and that it was a family-related offense. Dantini was unsure whether the juvenile was in the room at the start of his tour, or when he took over the desk.

Dantini testified that he observed the Respondent leave the juvenile room and walk past the desk. The door to the juvenile room was shut. When Dantini went to see whether anyone was with the juvenile prisoner, he opened the door to the room and observed the prisoner unattended. The prisoner was not hurting himself or trying to escape. He was handcuffed to the bar.

Dantini testified that when an officer arrests a youth, the officer is supposed to watch the prisoner and not leave him unattended. Youths are required by law to be kept separate from adult prisoners, and there is a greater risk of escape because youths are merely handcuffed to a bar, rather than locked in a cell.

Dantini testified that the Respondent did not approach him when he left the juvenile room. When the Respondent returned toward the juvenile room, he told Dantini that he had to get some paperwork. Dantini told the Respondent, "This is unacceptable," that he was not supposed to leave a prisoner unattended and would have to receive a command discipline (CD). The prisoner was left unattended for one-and-a-half to two minutes.

Dantini asserted that the Respondent violated procedure by leaving the prisoner unattended. According to Dantini, the Respondent should have notified him that he needed relief. Dantini had other officers, such as the Telephone Switchboard Operator (TS), watch a juvenile prisoner if the arresting officer needed to “bounce back and forth.”

On cross-examination, Dantini stated that he had not worked the same tour as the Respondent before this incident, but “on this day [he] just happen[ed] to be working at the same time.”

Dantini testified that when an officer makes an arrest, he has to fill out paperwork, “and for the most part for this particular juvenile prisoner that’s pretty much what it entails.” Arrest processing could take one to two hours, depending on the officer and what had to be accomplished. He agreed that arresting officers often had to multitask, doing paperwork and consulting with other personnel. Some of these responsibilities required leaving the juvenile room. Dantini said, however, that “for the most part in that particular room there are telephones in there.” He was not sure, but there might have been a typewriter as well.

Dantini stated that this matter was not a fingerprintable offense, as it was a juvenile non-felony arrest. Dantini was not sure if the prisoner’s parents had to be notified, as he was unsure of the circumstances. “If the parents were on the scene I’m not sure.” There was not necessarily a conferral with Corporation Counsel because a Family Court date could have been set without doing so. Dantini conceded that charges had to be drawn up as part of the arrest processing.

Dantini stated that the command had a domestic violence (DV) officer, whose job was to review all police activity on domestic incidents. This arrest constituted a DV offense. The DV officer was also there to consult with the arresting officer “to see what needs to be done.” The

DV officer's review could also take place at a later date, but if the officer was working, it was ideal to do it at the time of the arrest processing.

Dantini stated that in order to see the juvenile room, he had to look up from the desk. He conceded that he might have had an "interaction" with the Respondent before he saw him leave the juvenile room. Dantini did not recall the Respondent saying that he had to speak to the DV officer and would be right back. Dantini did not recall "having a disagreement" about how long the arrest processing would take, or telling the Respondent to hurry because he was not going to get a lot of overtime. Dantini admitted that it was the desk officer's job to supervise the arrest processing. This supervisory task included inquiring how far along the officer was in the process.

Dantini agreed that on a "busy night" in the command with two or three arrests, an officer would be assigned specifically to watch the adult prisoner holding cells.

Dantini testified that Lieutenant Morse, the command's integrity control officer, saw him standing by the juvenile room. Dantini explained to Morse what was going on, and Morse told him to issue a CD.

Dantini stated that he had seen other officers briefly walk away from the juvenile room, but they "usually come to the desk or a supervisor or to another officer." If, for example, he saw an officer walk away from the cell area and out of the arrest processing room, but still within the general vicinity, he would issue a warning. Dantini admitted that he could have issued a warning, on his own, to the Respondent.

Sergeant Michael Benitez

On August 12, 2006, Benitez was assigned as the 4x12 desk officer at the 94 Precinct. Benitez testified that on or about that day, he observed a person return to the precinct to retrieve his property. The individual had been a "walk through" prisoner, meaning that he physically was unable to be in the cells and central booking, so two officers had to escort him. Benitez stated that the Respondent had been at the arraignment part with the prisoner. Benitez sent Police Officer Busacco down to assist the Respondent and relieve whomever had been with him. About one or two hours later, the prisoner returned.

When Benitez asked how he gotten there so fast, the prisoner told Benitez that he had received a ride back to the precinct from the Respondent and Busacco, which was a block away from the precinct. Benitez spoke to Busacco, then the Respondent, about the matter. Busacco "denied she refused – she told PO Flannery she didn't want – she disagreed with his decision to bring that prisoner back" and said that the Respondent did so without her permission. The Respondent told Benitez that "the judge informed him to give the guy the ride back."

Benitez asserted that the Respondent did not have authorization to transport the person in a Department vehicle because "he wasn't in police custody or needed assistance from the police department." Benitez said that the Respondent should have gotten authorization from a supervisor or put it over the radio.

On cross-examination, Benitez testified that while the prisoner was already at central booking when he arrived at work, the prisoner had been in and out of the precinct cells and the hospital for several days. Benitez believed he was on crutches. After the hospital released him, he went through the system.

Benitez agreed that the prisoner was not held in jail after arraignment. He stated that it was not that the judge "informed" the Respondent to give the prisoner a ride, but "asked him" to do so. While Benitez did not consider the judge's request to be inappropriate, the Respondent's action was not permitted by the Patrol Guide because the individual had been a prisoner. Benitez would not have approved a request by an officer to bring the person back, although he conceded that this was within his discretion.

Benitez admitted that Busacco had not complained to a supervisor about the Respondent's action, or report it over the radio and say "this is wrong." Benitez admitted that Busacco was not disciplined and that this was his decision. Benitez did not discipline Busacco for not notifying a supervisor of the Respondent's decision because he determined that only the Respondent was at fault. Benitez interviewed both "and they had two different stories," with the Respondent admitting that he brought the prisoner back to the command. Benitez issued a CD to the Respondent. He stated that both the Respondent and Busacco should have notified a supervisor.

Benitez agreed that primarily, the vehicle's recorder is responsible for radio transmissions. The recorder here did not let anyone know "that a prisoner or former prisoner was being transported back to the area where he had been arrested." Benitez found out that the Respondent was the operator and Busacco was the recorder.

On re-direct examination, Benitez testified that the prisoner was assigned to the Respondent and was under his control. The Respondent and Busacco were not working as partners. Benitez asserted that the Respondent was the "senior officer" and that in certain situations, the senior officer is in charge.

On the Court's examination, Benitez testified that as the junior officer, it was not Busacco's obligation, even though she was the recorder, to ask permission over the radio to take the prisoner. Benitez testified that "the senior person in that car said he was going to do it and that was it." He then stated that Busacco was not the recorder because they were not on patrol.

Sergeant Sebastian Mannuzza

Mannuzza had been a member of the Department for 15 ½ years. He was previously assigned to the 94 Precinct. On November 8, 2008, he was the patrol supervisor on the 4x12 tour. He heard a radio run for a 10-34, an assault in progress, that was "directed to" the Respondent and his partner, Police Officer Suarez. Suarez radioed the dispatcher that they would respond upon completion of their current job. Mannuzza advised the dispatcher that he would respond to the job also. Mannuzza testified that the conditions sergeant and his driver also radioed that they would respond.

The recording (see Department Exhibit [DX] 1, compact disc; DX 1a, transcript¹) was admitted in evidence.

Mannuzza stated that series 30 radio codes usually signaled a "high priority job that's in progress at the time." Series 50, however, could indicate a dispute or a disorderly person. An aided case is a 10-54.

Mannuzza arrived at the job, spoke to the complainant, and determined that it was not an assault in progress, but merely a dispute. Mannuzza told the dispatcher to have the Respondent and Suarez meet him at the assault job upon completion of their current job.

When the Respondent and Suarez arrived, about ten minutes after the radio run, the Respondent stated that when the dispatcher "directed" them to the 10-34, they were on an aided

¹ The disc also contains the 911 call.

case. The Respondent told Mannuzza that there were “family and friends present” with the aided. The Respondent stated that Emergency Medical Services (EMS) was present and that the victim was going to be removed to the hospital. The Respondent added that “he handled jobs like that in the 75th all the time, putting off a priority job like a 34 while he is handling something else” because it was such a busy precinct. Mannuzza spoke to Suarez and the Respondent at the same time.

Mannuzza asserted that in his opinion and experience, if there was “an aided case with family or friends present and EMS present, depending on the officer’s action if they are performing CPR or something like that where they were taking a hands on role,” he could understand the officer remaining. Mannuzza contended that the Respondent was “a senior officer,” and it was “a severe mismanagement of his discretion.”

Mannuzza told the Respondent he should have taken himself off the aided case and responded to the 10-34. He informed the Respondent and Suarez that he was issuing CDs to both.

On cross-examination, Mannuzza testified that both the aided case and the 10-34 were in sector Charlie George, the assignment of the Respondent and Suarez. Mannuzza stated that the dispatcher raised their sector and directed them to respond. He agreed that under proper procedure, the dispatcher would have known that their sector was on the aided job because the Respondent and Suarez would have radioed that they were going there (the dispatcher later radioed them to “come off the 54” and respond to the 10-34). Mannuzza noted that a different dispatcher could have come on duty in the interim.

Mannuzza testified that he did not know at the time what job the Respondent and Suarez were on. His understanding of the aided case was that the aided was “semi-unconscious. They

were getting pedigree information from family members” for identity purposes and to see what medication she might have taken. He agreed that the location was a grand opening party at a Vespa dealership.

Mannuzza agreed that because he radioed that he would be backing up the 10-34, and the conditions sergeant said the same thing, Suarez would have believed that four officers (two sergeants and two drivers) would have been responding to that job.

Mannuzza stated that on an aided case, an officer was required to prepare the aided report, get the aided’s pedigree information, find out what hospital the aided is going to, and possibly notify family members or friends.

Mannuzza agreed that if EMS needed help, the officer should remain on the scene. “Generally speaking,” the officer would be responsible for crowd control when EMS was working. He agreed that the officer’s responsibility depended on what he was actually doing at the scene. “All they had to do was tell me the situation,” Mannuzza testified.

Mannuzza testified that about an hour after their first discussion, and after telling the officers that he was issuing a CD, the Respondent told him he thought the assault job had been referred to with a 10-5 series signal. Mannuzza did not believe Suarez said this, but he did not remember completely.

Mannuzza testified that after he arrived at the 10-34 and determined it was merely a dispute, he called the dispatcher on the landline for her pod at MetroTech to find out what job the Respondent and Suarez were on and whether EMS was present. He stated that he wanted to know what job the Respondent and Suarez were on before they arrived at the 10-34 scene. Mannuzza denied having “suspicion” that they were “dogging it” at the aided case, but admitted that he was “[c]urious” why they did not respond to a “priority job.”

Mannuzza admitted that this was the first time he had given a CD for “failing to prioritize a radio run,” and had never heard of a similar CD being given.

Mannuzza testified that he did not listen to a recording of the radio transmissions before his testimony.

The recording (see Department Exhibit [DX] 1, compact disc; DX 1a, transcript²) was played in court.

After listening to the recording, Mannuzza clarified that the dispatcher did not direct the 10-34 to the Respondent and Suarez, but rather “put the job out for whoever was listening to respond.” There were about 20 seconds of silence until Mannuzza came on the air and Suarez stated that his sector (referred to on the recording as Charlie) would respond upon completion. Later, after Mannuzza realized the 10-34 was only a dispute, he told the dispatcher to “slow it down.” Mannuzza agreed at trial that anyone listening to the radio would have heard this.

Mannuzza then asked the dispatcher if she knew of the estimated time of arrival (ETA) for sector Charlie. When the dispatcher raised the sector, the Respondent stated that they were still on “the uncon [static] unconscious, central” (see DX 1 at 05:22, DX 1a at p. 5).³ Mannuzza told the dispatcher to have sector Charlie come off their current job because he needed them on “this 34.” The Respondent and Suarez then responded to the 10-34 location.

On re-direct examination, Mannuzza testified that once the officers radioed that they “would accept” the 10-34, that job became assigned to them. Because it was a 10-34, they should have responded immediately upon taking the job.

² The disc also contains the 911 call but that was not admitted into evidence.

³ The transcript cuts off the Respondent’s remark at “we’re still going to be out on the, the ”.

The Respondent's Case

The Respondent testified on his own behalf.

The Respondent

The Respondent had been a member of the Department for 11 ½ years, and approximately the last 4 ½ at the 94 Precinct. Prior to that, he had been at the 75 Precinct.

Regarding the specifications charging lateness, the Respondent testified that his tour at that time was 0705x1540. On occasion, he had trouble getting to work on time. He testified that no sergeant said that he could not put in a "28" for those dates. Thus, his overtime pool would be docked the amount of time he was late, and he would not get paid for that time.

Regarding his failure to make a proper entry concerning the issuance of a summons, the Respondent testified that he responded to a job at a store, where a man was angry that he did not receive change for his purchase. The clerk said that the change was in the man's bag. When the Respondent explained this, the man screamed, threw the bag, and spit at him. The Respondent issued a summons for disorderly conduct.

Approximately two days later, the man appeared at the precinct and told the desk officer that he was going to shoot the Respondent. He also told either the Internal Affairs Bureau or inspections that the Respondent was working for organized crime. "Within an hour the case was thrown out," but the investigation revealed the Respondent's failure to make a memo book entry of the summons.

The Respondent stated that he was supposed to put information about the summons in his activity log, or memo book, such as the summons number and the defendant's pedigree information. This information, the Respondent said, was on the summons itself. He asserted

that the case did not “suffer in any way” from his failure to put “the summons number information” in his memo book. He wrote only “96 x1,” meaning that a summons was issued. He did not put the “specific information . . . because it was on the form.”

With respect to the specification of failing to properly search a prisoner, the Respondent testified that he responded to a domestic dispute. The perpetrator, nude at the time, was arrested. The Respondent handcuffed him and got him dressed. He searched the pair of shorts the prisoner put on. The Respondent had searched him twice before placing him in the vehicle. At the precinct desk, he “did a glancing search,” a “pat down.” He admitted that he was being stubborn because he had searched the prisoner twice already, and it “was absolutely my fault.”

The Respondent asserted that, “Within that time somebody gave him a pair of keys that I was not privy to.” The lieutenant that searched the cells found the keys. There was no allegation that the prisoner hurt himself or anyone else with the keys.

Regarding the allegation that he left a youth unattended on July 7, 2006, the Respondent testified that he arrested a youth. He believed Dantini was the desk officer when he brought the prisoner to the command.

The Respondent placed the youth in the juvenile room, located “[d]irectly to the left” of the desk. He asserted that neither the typewriter nor the computers in the room worked.

The Respondent asserted that there were many tasks he needed to do for the arrest, like typing and faxing paperwork, and making telephone calls outside the prisoner’s presence. He testified that “the normal procedure in the 94th Precinct or at least at the time” was that the youth was assigned a guardian other than the arresting officer. This way, the arresting officer could do all his paperwork. The Respondent asked for a guardian “[m]ultiple times,” but was denied.

The Respondent testified that he approached the desk and “said I have to go to ask if I have to voucher these papers.” Dantini looked up from “writing in the book” and gave a small salute (characterized by the Respondent’s attorney as a two-finger “Benny Hill” salute). The Respondent “assumed that meant go right ahead” because “that gesture means” he was permitted “to step aside for a little bit.”

The Respondent stated that he was away from the juvenile room for one minute at most to ask the DV officer, 40 feet away, if he had to voucher certain photographs for this criminal mischief case. “No one knew the procedure except for the domestic violence officer.” The DV officer said no, so the Respondent returned to the juvenile room. Dantini was standing at the door and a lieutenant was inside the room. Dantini leaned over and asked the Respondent, “why am I watching your prisoner?” The Respondent replied, “sir and then I just stopped. I really didn’t say anything to him,” except possibly “I don’t know,” “because that was it.” He added that he did not want to embarrass Dantini in front of the lieutenant.

Regarding the ride he gave to the former prisoner at the judge’s request, the Respondent stated that he had arrested the individual on misdemeanor charges of trespass and heroin possession. The man was an addict and was on crutches for an untreated broken ankle. He did not see a doctor because he had no insurance and did not want to be a burden. The ankle “was being held on by skin.” As instructed by his sergeant, the Respondent wrote on the prisoner’s paperwork that he was a walk through and that the Respondent would take him to central booking.

After the hospital discharged the prisoner “because there was nothing they could do to his foot,” the Respondent took him to central booking. The judge dismissed the case and told the

Respondent, "He is in pretty bad shape would you mind giving this person a ride back to the command." The Respondent agreed to do so.

The Respondent testified that he was by himself until "relieved" by Busacco. He and Busacco drove with the prisoner back to the command.

The Respondent agreed that members are required to radio that there is a civilian in their police vehicle. The Respondent did not call Benitez and alert him because he did not have a cell phone, his radio was "almost completely dead," and it was the recorder's job to do so. He believed that the recorder had done so. He denied that Busacco refused to do so, or told him they should not be transporting the prisoner.

Regarding the matter of the radio runs, the Respondent testified that he was working with Suarez, who was the recorder. They were assigned a job of an unconscious woman at a grand opening for a Vespa dealership. At the event, which was indoors, a band was playing. The Respondent believed wine was being served. EMS was present, but there were about 250 people trying to see what was happening. Some of the onlookers said they knew the aided, and some were screaming at EMS.

The Respondent learned that the aided previously had surgery to remove a brain aneurysm, and collapsed at the party, smashing her face. The Respondent did not render medical attention to the aided, but did perform crowd control, such as telling people to back up. He "had to remove" some individuals that had become emotional.

The Respondent asserted that he "instructed" Suarez to return to the vehicle to get paperwork. Suarez came back and stated that "he picked up a 52 family that no one else was picking up." The Respondent testified that Suarez "believed it came over as a 52 family." Suarez told the Respondent that a sergeant and driver had gotten to the job already. The

Respondent denied that he could hear the first radio transmissions over the music. He testified that he took over the radio while Suarez was doing the paperwork. He heard the dispatcher raise their sector and ask for their ETA. He responded that it would be "a while" because the aided was unconscious.

After he was instructed to leave the aided case, the Respondent went to the 10-34, although he denied knowing at the time that it was a 10-34. Mannuzza spoke to the Respondent, "I wouldn't say yelling at me, but telling me what are you doing holding a 34." The Respondent answered that "you can hold 34's. If I have five 34's at one time I'm going to be holding one or another" He also shared that the aided might die. Mannuzza told him "this isn't the 75th Precinct. This is the 94th Precinct and we do things differently here."

On cross-examination, the Respondent asserted that when he was at central booking with the prisoner that got a ride back to the command, he requested relief because it was the end of his tour. He asserted that Benitez told him that Busacco was relieving him. The Respondent testified that "she was to take custody of the prisoner," and did so. He testified, nonetheless, that the prisoner was "under both our control."

The Respondent was standing with the prisoner at the defense table. The judge dismissed the case about "five seconds" after Busacco arrived to take control of the prisoner. The Respondent stated that as he was going back to the cells, the judge asked him if the prisoner could get a ride. Busacco was present in the courtroom when the judge made the request.

At the vehicle, the Respondent saw Busacco place a radio to her mouth. He did not radio for permission to transport the prisoner or ask Busacco to do so. Nor did the Respondent ask what she put over, if anything, because "that was her job and she as a police officer she knows

what her job is.” He was not the senior officer because “There is no senior officer. We are all officers.” He conceded that he had more time with the Department than Busacco did.

The Respondent asserted that EMS was unable to render assistance to the aided because “the crowd wasn’t allowing it.” He felt the aided case was a high priority job because “if she dies that was a big problem.” He would have to secure the location, including finding out “every name of every person that’s in that building so I can relay to the detectives to find out if this was a crime or not.” He would also have to notify family members and the medical examiner.

FINDINGS AND ANALYSIS

Disciplinary Case No. 83155/07

Specification No. 1

The Respondent is charged with leaving a juvenile prisoner unattended in the youth room without notifying the desk officer. Lieutenant Roderick Dantini, then a sergeant in the 94 Precinct and acting on July 7, 2006, as the desk officer, testified that he observed the Respondent with a juvenile prisoner in the youth room. The Respondent was the arresting officer, and it was a family-related offense. Dantini then saw the Respondent leave the youth room and close the door. The Respondent estimated that the juvenile was left unattended for about one-and-a-half to two minutes.

The Respondent suggested that he was attempting to “multitask” during the arrest processing by, for example, contacting the domestic violence officer. The Court rejects this defense because, as Dantini testified, the Respondent could have notified him that he needed to step out of the youth room. The Court does not credit the Respondent’s self-serving, dubious

claim that Dantini okayed his request with a “Benny Hill” salute. As such, the Court finds him Guilty.

Specification No. 2

The Respondent is charged with violating Patrol Guide Procedure 212-07, which covers transportation of non-members of the service in Department vehicles. It was not wrong per se for the Respondent to accede to the judge’s request to give the prisoner a ride back to the command. Nor is it in this Court’s purview to decide whether the judge made an appropriate request. It was nonetheless the Respondent’s duty to get a supervisor’s permission and to notify the radio dispatcher. Although Procedure 212-07 assigns these responsibilities to the recorder, the rule does not contemplate situations where one officer unilaterally decides to transport a non-member. Whether Busacco should have radioed the request or not, it was the Respondent’s decision to transport the prisoner, and his obligation to seek permission for that act. Hence, the Court finds him Guilty.

Specification No. 3

Having pleaded Guilty, the Respondent is found Guilty.

Disciplinary Case No. 84416/08

Specification Nos. 1-3

Having pleaded Guilty, the Respondent is found Guilty.

Disciplinary Case No. 84416/08Specification No. 1

The Respondent is charged in the final specification with failing to prioritize a radio run. Specifically, he is accused of not responding to a call of an assault in progress, and instead remaining on an aided case. The Department failed to prove that the Respondent's actions were contrary to the good order, efficiency and discipline of the Department, and the Court finds him Not Guilty.

As noted by Mannuzza, the Patrol Guide does not specify that certain jobs are higher priority than others in terms of response order or time. On the other hand, common sense is key to the Patrol Guide, and there are certainly scenarios where failure to respond to a job will constitute misconduct.

In the instant case, however, the Respondent was taking police action at the aided job by keeping the crowd away from the aided and allowing EMS to render medical assistance. The Court credits his reasonable explanation of why he remained at that scene rather than abandon it and go to the 10-34. The radio transmissions recorded the Respondent saying that they were still out on the "unconscious." It is not even clear that Mannuzza or the Advocate was contesting that explanation.

The Court notes that the Respondent and his partner were not "assigned" the 10-34 by the dispatcher. There is no dispute, however, that it was geographically within their sector. There were about 7 seconds of dead air after the dispatcher called out the 10-34. At that point, Mannuzza went on the air; before he could even finish, Suarez came on the air and stated that his sector would respond upon completion of the aided job. If anything, this evidence shows that the Respondent was not "dogging it" in response to the 10-34.

In sum, no evidence was presented that the Respondent, under circumstances where he was taking police action, should have left the aided case the moment the 10-34 came over and responded thereto. Accordingly, the Court finds him Not Guilty of failing to prioritize that radio run.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on August 31, 1998. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of a series of violations of Department procedures. These include arriving late to work on several occasions, giving a ride to a discharged prisoner, leaving a juvenile unattended, failing to keep proper memo book entries, and failing to thoroughly search a prisoner. It is the Respondent's "personal responsibility to insure that he is in compliance with not only all Patrol Guide procedures, but also with the specific requirements of his particular assignment on a given tour of duty." *Case Nos. 80214/04, 80857/05, 81372/05, & 81620/06, signed Nov. 8, 2006*. The Respondent's prior disciplinary record, see Confidential Mem., infra, indicates that he has been remiss in attention to the paramilitary demands of this organization.

Accordingly, the Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be

terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit 30 vacation days. See Case No. 74864/99, signed April 2, 2001 (30 vacation days and 1 year probation for officer with several prior disciplinary events: he twice fell asleep on patrol, once resulting in a failure to respond to child-abuse-in-progress call which, fortuitously for him, turned out to be unfounded).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
JUN 21 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHRISTOPHER FLANNERY
TAX REGISTRY NO. 922352
DISCIPLINARY CASE NOS. 83155/07, 84416/08 & 85379/09

In 2006 and 2008, the Respondent received an overall rating of 2.5 “Competent/Low” on his annual performance evaluation. In 2007, he was rated 3.0 “Competent.” [REDACTED]
[REDACTED]
[REDACTED]

The Respondent has been the subject of one prior formal disciplinary adjudication. In 2005, he forfeited 15 vacation days for being absent without leave for a period of nearly two hours at the start of his assigned tour. When he did arrive at work, he appeared disheveled and smelled of alcohol. He then gave his supervisors an untrue explanation for his appearance. In November 2007, the Respondent was placed on Special Monitoring – Level III due to poor performance.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials